

DONALD & BARBARA SCHNEIDER

IBLA 85-414

Decided September 30, 1986

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying approval of assignment of record title to oil and gas lease N-33961.

Affirmed as modified.

1. Oil and Gas Leases: Assignments or Transfers

Where the description of lands included in an oil and gas lease assignment filed with BLM for approval is unclear and fails to conform to the lands described in the lease, neither BLM nor this Board is empowered to supply a description of the land to be conveyed by the proposed assignment, which is properly disapproved.

APPEARANCES: Donald and Barbara Schneider, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Donald and Barbara Schneider (Schneiders) appeal from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated February 5, 1985, denying approval of the partial assignment of record title to oil and gas lease N-33961. Lease N-33961 covering 4,963.56 acres in Elko County, Nevada, was issued to Plano Petroleum Corporation (Plano) and Wing and McCain Energy Company (Wing and McCain) effective February 1, 1982. Plano and Wing and McCain subsequently assigned their interests in the lease to Southeast Oil and Gas, Inc. (Southeast), of Fort Lauderdale, Florida. BLM approved that assignment effective April 1, 1984. Southeast apparently then sold portions of the lease to various individuals including Schneiders. On March 2, 1984, a request for approval of an assignment affecting leased lands to be conveyed to the Schneiders was first filed with BLM.

On May 14, 1984, BLM informed the Schneiders that on March 21, 1984, by notice published in the Federal Register, BLM had suspended approval of record title assignments of less than 640 acres of nonproducing noncompetitive oil and gas leases in the lower 48 states. This circumstance is not directly relevant to this appeal. However, the May 14, 1984, notice from

BLM also informed the Schneiders that item 2 on their assignment form, the description of the leased lands, was in error and should be corrected. Item 2, as originally completed, had shown that nearly 5,000 acres of land were to be assigned to the Schneiders. But other writing on the portion of the form which is intended to be completed by BLM, apparently inserted by the Schneiders' assignor, indicated that 160 acres in sec. 8 were to be transferred. Instead of describing the 160-acre tract to be conveyed in conformity with the public land survey, as the original lease to Plano and Wing and McCain had done, however, the defective assignment referred to "lots 3-6" of sec. 8, T. 34 N., R. 66 E. Reference to the master title plat for T. 34 N., R. 66 E., discloses there are no lots in sec. 8. Therefore, the reference to "lots 3-6" is meaningless in the context of this appeal. The lease issued to Plano and Wing and McCain had properly described lands in sec. 8 according to the rectangular survey system as the "NW 1/4." The Plano lease included only the NW 1/4 in sec. 8, in T. 34 N., R. 66 E. The entire Plano lease interest acquired by Southeast in sec. 8, was also limited to the NW 1/4.

In the defective lease assignment given by Southeast to Schneiders which was filed with BLM on March 2, 1984, item 2 contains two sections. The first section is headed "Describe the lands affected by this assignment." In this section, Southeast had inserted a description of the entire lease interest which it had acquired from Plano and Wing and McCain, totalling 4,963.56 acres. Included in the list of lands conveyed under this section was the 160 acres leased in sec. 8 which were described as: "Section 8: NW 1/4". In the second section of item 2, which is entitled: "Assignment approved as to lands described below", Southeast typed in this entry: "T 34 N, R 66 E Section 8: Lots 3-6 Elko County, NV Approximately 160 Acres."

By letter dated September 13, 1984, BLM notified the Schneiders of the lifting of the Bureau-wide suspension on approving small acreage lease assignments. BLM's September 13 letter also reiterates that the assignment forms for lease N-33961 were being returned for correction of item 2. The record then shows that on December 7, 1984, BLM received appellants' amended assignment of lease N-33961. This consists of three copies of BLM form 3106-5, but the signatures of the assignor's agent, Albert Weston, appear as photocopies, which are not "manually signed" as the instructions on the assignment application require. Item 2 is, however, changed to show that the land sought to be assigned is all located within sec. 8, T. 34 N., R. 66 E., and is limited to "lots 3-6" in sec. 8, using the description which previously appeared in item 2 of the March 2 assignment.

In its decision of February 5, 1985, BLM denied approval of this assignment stating: "The assignment forms are not originally signed by the assignor." BLM relied upon the instructions printed on form 3106-5 to deny approval of the Schneiders' submission. The instructions require the user to "file three (3) completed and manually signed copies in the appropriate BLM office." These instructions appear to have been written to conform to 30 U.S.C. § 187a (1982) which provides for the filing of "three original executed counterparts" of the assignment. See Catharine D. Prigge, A-27677

(Sept. 23, 1958); David L. Mills, A-26949 (Sept. 27, 1954). See also 43 CFR 3106.4-1.

On appeal to this Board the Schneiders explain that in February 1984 they purchased an interest in oil and gas lease N-33961 from Southeast. The Schneiders state that in response to BLM's September 13, 1984, request for correction of item 2 on assignment form 3106-5, they attempted to contact Southeast by telephone without success and finally sent three of four executed copies of BLM form 3106-5 to Southeast for correction. Appellants state they waited 6 months without receiving a reply from Southeast whereupon they copied their remaining copy of the assignment, and forwarded three copies to BLM.

The record on appeal now contains copies of two purchase agreements furnished by the Schneiders with their statement of reasons. The first is executed by the Schneiders as purchasers and signed by Albert Weston, as secretary-treasurer representing Southeast. The agreement indicates that in consideration of \$3,200, the Schneiders would receive an 84.5 percent interest in a lease described as the NW 1/4, sec. 8, T. 34 N., R. 66 E., Mount Diablo Meridian, Nevada, containing 160 acres with a 9-year duration. ^{1/} A second agreement is also signed and dated by the Schneiders as purchasers, in which Fred Weston has signed as president on behalf of Southeast. The terms of the second agreement are identical to those of the first except that the land to be sold is described as lots 3, 4, 5, and 6, sec. 8, T. 34 N., R. 66 E., Mount Diablo Meridian, Nevada, the same designation used on the two assignment forms submitted by the Schneiders to BLM. The reason for this discrepancy is not explained.

In the absence of BLM approval on form 3106-5, the partial assignment of oil and gas lease N-33961 is ineffective. See The July Corp., 66 IBLA 20 (1982). The regulation requires that there be "[t]hree originally executed copies of an assignment filed with BLM in order to entitle the applicant to obtain approval of the assignment of an oil and gas lease. 43 CFR 3106.4-1. Schneiders contend, in effect, that in this case there has been substantial compliance with this requirement of the regulation.

[1] Regardless of whether the photocopied signatures on the request for approval constitute proper grounds for rejection, the BLM decision must be affirmed. A request for approval of an assignment of an oil and gas lease is properly rejected to the extent the lands described in the assignment fail to identify land embraced in the lease. Southern Union Production Co., 70 I.D. 406 (1963); see 43 CFR 3106.5. Although it is possible the parties may have intended to assign the NW 1/4 of sec. 8 embraced in the lease, item 2 of the form requests approval of an assignment of lots 3-6 in sec. 8--land which is neither embraced in the lease nor found on the master title plat. BLM personnel are without authority to correct erroneous land descriptions or to construe ambiguous descriptions in such a way as to make them acceptable. Bob G. Howell, 63 IBLA 156, 158 (1982).

^{1/} We note the assignment form states that the percentage of Southeast's record title being conveyed to the Schneiders is 100 percent.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed as modified by this opinion.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

